





## **Sandhu (Migration) [2024] AATA 1612 (1 May 2024)**

1.

2.

### **DECISION RECORD**

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <b>DIVISION:</b>                  | Migration & Refugee Division                                                                                                                                                                                                                                                                                                                                                                         |
| <b>APPLICANT:</b>                 | Mr Lakhwinder Singh Sandhu                                                                                                                                                                                                                                                                                                                                                                           |
| <b>REPRESENTATIVE:</b>            | Mr Amber Gupta (MARN: 0533773)                                                                                                                                                                                                                                                                                                                                                                       |
| <b>CASE NUMBER:</b>               | 2103239                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>HOME AFFAIRS REFERENCE(S):</b> | BCC2019/5214594                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>MEMBER:</b>                    | Amanda Mendes Da Costa                                                                                                                                                                                                                                                                                                                                                                               |
| <b>DATE:</b>                      | 1 May 2024                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>PLACE OF DECISION:</b>         | Melbourne                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>DECISION:</b>                  | <p>The Tribunal remits the application for a Skilled Regional Sponsored (Provisional) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 489 - Skilled - Regional (Provisional) visa:</p> <ul style="list-style-type: none"><li>• Public Interest Criterion 4020 for the purposes of cl 489.211 of Schedule 2 to the Regulations.</li></ul> |

Statement made on 1 May 2024 at 12.44pm

### **CATCHWORDS**

*MIGRATION – Skilled Regional Sponsored (Provisional) (Class SP) visa – Subclass 489 (Skilled – Regional (Provisional)) – false or misleading information – employment claims – Motor Mechanic (General) – ABF and AFP investigations – pay for visas schemes – successful completion of a Skills Assessment – absence of any direct evidence against the applicant – decision under review remitted*

3.

### **LEGISLATION**

*Migration Act 1958 (Cth), ss 65, 360*

*Migration Regulations 1994 (Cth), Schedule 2, cl 489.211; Schedule 4, PIC 4020*

### **CASES**

*Arora v MIBP [2016] FCAFC 35*

*Batra v MIAC [2013] FCA 274*

*Trivedi v MIBP [2014] FCAFC 42*

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

4. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 11 March 2021 to refuse to grant the applicant a Skilled Regional Sponsored (Provisional) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
5. The applicant applied for the visa on 17 October 2019. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 489.211 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because he did not meet the requirements of Public Interest criterion (PIC) 4020.
6. In reaching its decision the Tribunal did not consider a hearing to be necessary, as it was able to find in favour of the applicant based on the material before it, pursuant to s.360(2)(a) of the Act.
7. The applicant was represented in relation to the review.
8. The documentation provided to the Tribunal for the purpose of the review includes the following:
  - Employment reference dated 2 May 2019, which states that the applicant was employed full-time as a Motor mechanic for 76 hours per fortnight for the period February 2018 to 21 April 2019.
  - Australian Taxation Office (ATO) notices of assessment for the years ending 30 June 2018 and 30 June 2019.
  - Various payslips covering the period February 2018 to April 2019.
  - Banks statements issued by the ANZ Banking Corporation covering the period February 2018 to June 2019.
  - Superannuation statement issued by ANZ Smart Choice covering the period 30 June 2018 to 30 June 2019, showing deposits made to the applicant's fund.
  - Form 80 dated 11 May 2020 in which the applicant states (question 19) that he was employed by Christy Motors Pty Ltd from June 2017 to April 2019
  - Trades Recognition Australia (TRA) Job Ready Final Assessment Outcome dated 17 June 2019.bRA
9. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

### CONSIDERATION OF CLAIMS AND EVIDENCE

10. The issue in this review is whether the visa applicant meets PIC 4020 as required by cl 489.211 for the grant of the visa. Broadly speaking, this requires that:
  - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or

a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and

- the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
- the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
- neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).

11. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

**Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?**

12. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.
13. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.
14. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.

**15. Background**

16. On Wednesday 11 September 2019 investigators from the Australian Border Force (ABF) and the Australian Federal Police (AFP) executed a search warrant under the *Crimes Act (Cth) 1914* at the business premises of Jerome Mobile Engineers Pty Ltd and Christy Motors Pty Ltd, located at 4 Paul Court, Dandenong, Victoria, 3175 (the premises).
17. Earlier surveillance activities undertaken by the investigators on 8 August 2019 and 9 September 2019, the front gates of the premises remained closed until midday. Upon entering the premises on 11 September 2019 (pursuant to the warrant) officers of the ABF

and AFP observed dust covered vehicles, an unkempt workshop and no workers present, despite the search taking place during operating hours of the business. The officers further observed that the hoists were not operational, and the mechanics shop appeared to have not been functioning for some time. CCTV footage taken by the investigators showed that the five hoists in the mechanic's shop were not being utilised for mechanical purposes.

18. Whilst the investigators were conducting their investigation at the premises, a person approached the business and was questioned about their attendance at the premises. This person initially told investigators that he was attending to make superannuation payments and was found to have a large amount of money in his possession. During his discussion with the investigators, this person admitted that he was attending the premises because he had an arrangement with the business owner to provide him with employment experience for his points based skilled visa application and he was there to make his monthly payment for this purpose.
19. This person subsequently attended the offices of the ABF where he provides the following further information regarding his payment arrangement with the business owner:
  - He paid \$6,000 in cash to be paid in advance for a 12-month period of employment. The employer would only provide work experience for a 12-month period.
  - He was required to pay their own fortnightly salary of \$1,900 for full-time employment with tax and superannuation with tax and superannuation payments deducted from this amount. This left the sum of \$1,250 which was paid into his bank account as salary.
  - He was advised that if he wished to have part-time employment, he would be required to pay a monthly fee of \$650, to be paid in cash and handed to the son of the business owner. He would then be required to pay his own wage of \$920 per fortnight, which would be deposited into the business owner's account with a transaction reference of "training" or "cars". He would then receive \$750 in wages.
  - He told the investigators that he never worked on a full-time basis for the employer on either a full-time or part-time basis and the payslips generated for him by the employer were incorrect. He explained that the monthly fees he paid were for the employer to provide him with false employment claims or bogus payslips.
20. During the search of the premises at 4 Paul Court, Dandenong on 11 September 2019, investigators located a filing cabinet containing individual files. Many of these files were labelled with individual names and the words "payment records." Although one of these files contained the applicant's name, the content of the files was not read by the investigators. The delegate suspected that the applicant's name on one of the files suggested that he may have been paying his own wages in order to obtain work experience documents for his visa application and to procure a Skills Assessment through the Job Ready Program.
21. Based on the above information, the delegate wrote to the applicant on 10 November 2020 noting that he claimed to have been employed with Christy Motors Pty Ltd from 12 February 2018 to 21 April 2019 in his nominated occupation of Motor Mechanic (General) ANZSCO Code 321211.
22. The delegate set out the above information regarding the execution of the search warrant by ABF and AFP investigators and the information obtained in the interview.
23. The delegate advised the applicant that on the basis of the above information provided on 11 September 2019 to the ABF, the delegate had confirmed that the employer was/is operating

a payment for visa arrangement from the premises at 4 Paul Court, Dandenong, Victoria, where claimed employees of Jerome Mobile Engineers Pty Ltd and Christy Motors Pty Ltd pay for their false employment claims. These employment documents were then used to obtain a skills assessment for their nominated occupation and in some applications, claim points for Australian employment.

24. The delegate further advised that the claimed employer's bank statements were also seized by the ABF investigators on 11 September 2019 and the evidence in the bank statements supported the earlier statements regarding deposits made by applicants to provide wages. The delegate stated that analysis had determined that large cash deposits were made directly before wages were paid, in some instances between 2016 and 2019, up to 20 employees were paid on the same day. The delegate advised the applicant that his name appeared consistently on the statements provided for July 2017 to May 2019.
25. The delegate informed the applicant that the information suggested that cash deposits were made by the applicants to pay their own wages.
26. The delegate advised that as the ABF reported that the business did not appear to be an operational workshop, it raised concerns that Jerome Mobile Engineers Pty Ltd/Christy Motors Pty Ltd would have the capacity to employ the large number of workers paid and supported the position that the business owner was operating a payment for work experience scheme.
27. The delegate advised the applicant that this information raised serious concerns regarding his employment claims with Christy Motors Pty Ltd and the genuineness of the documents provided in support of the employment claims in his visa application. The delegate said that they reasonably suspected that he may have been paying his own wages in order to procure a skills assessment through the Job Ready Program and work experience documents for his visa application.
28. The delegate informed the applicant that there was evidence suggesting that he had provided a bogus document or false or misleading information in relation to the visa application to satisfy the requirements of PIC4020(1) with the result that the visa application may be refused. The delegate invited the applicant to respond (in writing) to the above matters.
29. On 25 November 202 the applicant provided a written response to the delegate's letter of concern, including the following documentation:
  - Applicant's statement.
  - Employment reference dated 11 June 2019.
  - Australian Taxation Office notices of assessment for the years ending 20 June 2018 and 30 June 2019.
  - PAYG payment Summary for the years ending 30 June 2018 and 30 June 2019.
  - Bundle of payslips for the period August 217 to June 2019.
  - Superannuation statements from August 2017 to June 2019.
  - Trades Recognition Australia (TRA) Job Ready Program Workplace Assessment dated 16 January 2019.

- TRA Job Ready Final Assessment Outcome dated 17 June 2019.
  - Emails from applicant to [jmeuraca@gmail.com](mailto:jmeuraca@gmail.com) dated 27 December 2018 and 7 August 2018 regarding employment arrangements.
  - Photographs claimed to be of the applicant performing mechanical tasks in the workshop.
30. The delegate was not satisfied that the information provided by the applicant in support of his employment claims and the information in response demonstrated that the applicant was employed by Christy Motors Pty Ltd, as claimed. The delegate gave greater weight to the information obtained from the execution of the warrant at the premises of Jerome Mobile Engineers Pty Ltd/Christy Motors Pty Ltd and the interview with the person located at the premises on 11 September 2019.
31. The delegate found that the applicant had provided information that was false and misleading in a material particular in relation to reg 489.211 and therefore was not satisfied that he met the requirements of PIC4020(1).
32. The delegate was not satisfied that there were compelling circumstances affecting the interests of Australia, or compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen that justify the granting of the visa.
- 33. Non-disclosure certificates**
34. The Department has provided a Certificate (signed by a delegate of the Minister on 30 June 2022) and issued under s 375 of the Act. In this Certificate the delegate claims that the disclosure other than to the Tribunal of information contained in email correspondence between the Department and TOEFL contained in TRIM reference numbers CLD2021/21797224, CLD2021/21797230, CLD2021/21797234, CLD 2021/21866064, CLD2021/22274838, and CLD2021/22915457 would be contrary to the public interest because it would disclose lawful methods for preventing, detecting and investigating breaches or evasions of the law which would or be likely to prejudice the effectiveness of those methods.
35. The Tribunal is satisfied that the Certificate is valid and that s375A applies to the contained in the above identified documents. Accordingly, the Tribunal has not disclosed the information detailed in the Certificate to the applicant.
36. The Department has further provided the Tribunal with a Certificate (signed 19 May 2023 by a delegate of the Minister) and issued under s 376 of the Act. In this Certificate, the delegate claims that the disclosure of information contained in documents OPD2023/179175, OPD2023/194073, OPD2023/194074, OPD2023/194088, OPD2023/194097, OPD2023/194120, OPD2023/194127, OPD2023/194130, OPD2023/194134, OPD2023/194136, OPD2023/194138, OPD2023/194140, OPD2023/194142, OPD2023/194144, OPD2023/194146, OPD2023/194147, OPD2023/194150, OPD2023/194152, OPD2023/194154, OPD2023/194158, OPD2023/194159, and OPD2023/194161 would be contrary to the public interest because it may disclose or enable a person to ascertain the existence or identity of a confidential source of information. The delegate further claims that the disclosure of information contained in documents OPD2023/192648 and OPD2023/192641 would be contrary to the public interest because the information was given to the Department in confidence.



37. The Tribunal considers that the Certificate is valid and that it would be contrary to the public interest to disclose the information contained in the above identified documents for the reasons provided by the delegate in the Certificate.

**38. Findings regarding PIC4020(1)**

39. The Tribunal has considered the events detailed by the delegate in her decision regarding the execution of the search warrant on 11 September 2019 and the observations made by ABF and AFP investigators of the premises at 4 Paul Court, Dandenong. The Tribunal finds the allegation made to investigators by the unnamed informant to be serious and concerning.

40. The Tribunal considers that schemes involving visa applicants paying money in order to obtain documentary evidence of employment and work they have not actually undertaken has the potential to undermine the skilled visa program in Australia.

41. However, in relation to the applicant's potential involvement in such a scheme, the Tribunal has considered the following matters support his submission that his employment was legitimate:

- The applicant's denial of any involvement in a pay for visas scheme operated by Mr Fernandez.
- The applicant's clear and consistent evidence regarding his employment with Christy Motors Pty Ltd and his explanation of his duties as a Motor Mechanic.
- The applicant's successful completion of a Skills Assessment by TRA, which involved him in demonstrating his technical skills as a mechanic in performing tasks chosen by the assessor and the answering of questions regarding his work. The Tribunal notes that there is no evidence before it of the assessor (TRA) raising any concerns about the applicant's work environment or the genuineness of his employment.

42. The Tribunal has also given weight to the payslips, taxation documents, bank statements and superannuation statements which it finds are supportive of the applicant's claim to employment by Christy Motors Pty Ltd during the period February 2018 until April 2019.

43. The Tribunal notes that the allegations made by the unnamed informant do not refer to the pay for visas scheme taking place during the period of the applicant's employment (i.e., between February 2018 and April 2019) and he makes no specific allegations against the applicant.

44. Whilst the information obtained by ABF and AFP investigators raises doubts about the business practices of Mr Fernandez and the operation of his businesses, the Tribunal is not satisfied that there is any explicit evidence before it which links the applicant to a pay for visas scheme.

45. Therefore, on balance, the Tribunal is not satisfied that the applicant's employment with Christy Motors Pty Ltd was part of a pay for visas scheme and was not legitimate. In making this finding, the Tribunal has given weight to the fact that the applicant's employment ceased before the execution of the search warrant on 11 September 2019. The Tribunal is not satisfied that there is a sufficient nexus between the concerns raised by ABF and AFP investigators regarding the operation of the Christy Motors Pty Ltd business in September 2019 and during the applicant's period of employment, to warrant a finding that his employment was not legitimate.

46.

**47. Conclusion**

48. The Tribunal is not satisfied that there is evidence before the Tribunal that the applicant has:

- given or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or a Medical Officer of the Commonwealth, a 'bogus document' as defined in s 5(1); or
- information that is false or misleading in a material particular as defined in PIC 4020(5),

49. in relation to the visa application or a visa held in the 12 months before the visa application was made.

50. Therefore, the applicant meets PIC 4020(1).

51. Based on the above, the applicant does satisfy PIC 4020 for the purposes of cl 489.211.

**DECISION**

52. The Tribunal remits the application for a Skilled Regional Sponsored (Provisional) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 489 - Skilled - Regional (Provisional) visa:

- Public Interest Criterion 4020 for the purposes of cl 489.211 of Schedule 2 to the Regulations

Amanda Mendes Da Costa  
Member

## ATTACHMENT

### Migration Regulations 1994

#### Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
  - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
  - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
  - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
  - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is *false or misleading in a material particular* means information that is:
- (a) false or misleading at the time it is given; and
  - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

## ***Migration Act 1958***

### **s 5 Interpretation**

(1) In this Act, unless contrary intention appears:

...

***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...